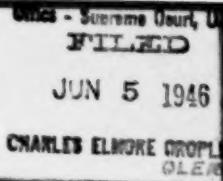


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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 144

HELEN C. CALVERT,

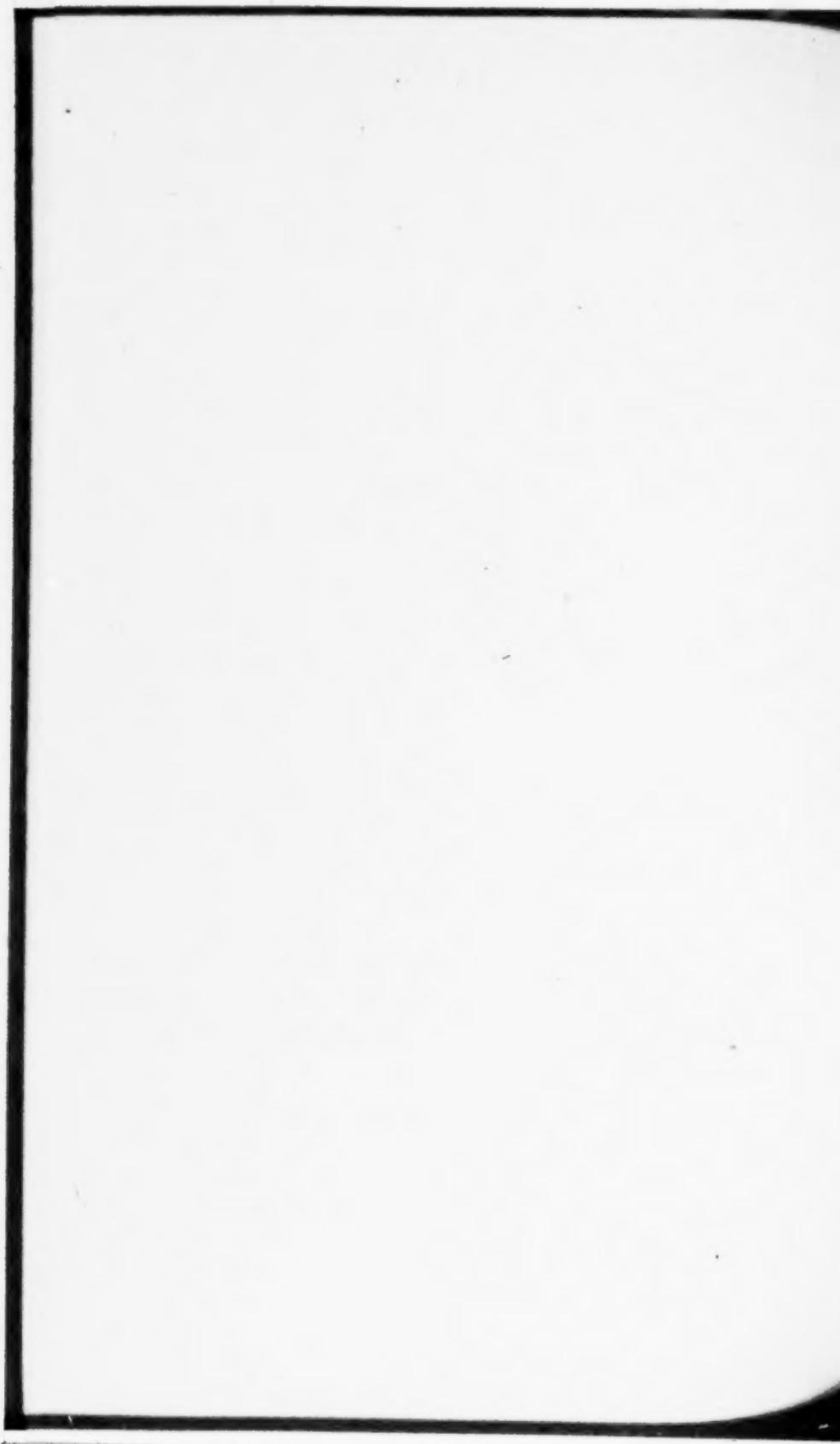
Petitioner,

vs.

CHARLES HENRY SMITH, CHARLES HENRY
SMITH, JR., FANNY J. SMITH, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF APPEALS OF THE COMMON-
WEALTH OF VIRGINIA AND BRIEF IN SUPPORT
THEREOF.

SAMUEL B. BROWN,
Counsel for Petitioner.



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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1946

No. 144

HELEN C. CALVERT,

vs.

Petitioner,

CHARLES HENRY SMITH, CHARLES HENRY SMITH, JR., FANNY J. SMITH, AUBURN GARDENS, INC., A CORP.; AUBURN BUILDERS, INC., A CORP.; FEDERAL HOUSING AUTHORITY, A CORP.,

Respondents

FROM THE SUPREME COURT OF APPEALS OF VIRGINIA

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petition of Helen C. Calvert respectfully shows to this Honorable Court as follows:

A. Summary Statement of the Matter Involved

This is a Petition by Helen C. Calvert for a writ of certiorari to the Supreme Court of Appeals of Virginia to review a decision of that Court (R. 85), which rejected the Petition

of Helen C. Calvert for an appeal from a decree entered by the Circuit Court of the City of Alexandria on the 17th day of July, 1945, thereby refusing an appeal, the effect of which was to affirm the decree of the aforesaid Circuit Court which Court had by decree on the aforesaid date sustained the several demurrers filed by these respondents to the Bill of Complaint of your Petitioner as amended and dismissed the same at the cost of your Petitioner (R. 85), this decree was final.

The suit was brought by the Petitioner (Plaintiff below) in Chancery to secure a decree in Equity for the return to her of 500 shares of common stock of Auburn Gardens, Inc. (Corporation 2), originally issued to your Petitioner for a valuable consideration. These shares of stock were subsequently procured from your Petitioner by Charles Henry Smith, Sr., Respondent (Defendant below) by fraud, breach of trust, undue influence, breach of confidential relationship and duress of property and transferred on the books of the said corporation to Charles Henry Smith, Jr.; and/or Fanny J. Smith, Respondents (Defendants below) the son and wife of Charles Henry Smith, Sr., respectively.

Further to secure the cancellation of 500 shares of the common stock of Auburn Gardens, Inc., Respondent (Defendant below) then standing in the name of Charles Henry Smith, Sr., Respondent (Defendant below) obtained from the treasury of the said corporation by fraud on the said corporation and on your Petitioner.

Further to secure the cancellation of 500 shares of common stock of Auburn Gardens, Inc., Respondent (Defendant below) now standing in the name of Charles Henry Smith, Jr., Respondent (Defendant below) or Fanny Smith, Respondent (Defendant below) which stock was obtained by one Malcolm Kilduff from the treasury of the

said corporation by fraud in connivance with the said Charles Henry Smith, Sr., on the said corporation and your said Petitioner.

Further to secure such other and further relief in the premises as the nature of the case required or to which the Court below should have seen just and proper.

Federal Jurisdiction

The jurisdiction of this Court is invoked under the XIV Amendment of the Constitution of the United States. This section is known as the "due process clause" to wit, no person shall be deprived of his life, liberty or property without due process of law. The Courts of the State of Virginia both the lower or circuit court and the Supreme Court of Appeals, denied your Petitioner her constitutional rights under this section by refusing her a full and fair hearing on her claim against the respondents herein (Defendants in the court below) and in furtherance of the said violation refused to permit her to testify, to produce witnesses, to introduce relative documents and other evidence in support of the allegation in her bill of complaint, and likewise denied her a trial by jury as guaranteed by the above amendment.

In addition to the above the jurisdiction of this Court is likewise invoked in that a federal agency, to wit, the Federal Housing Administration is a party respondent and against whom the defendant Charles Henry Smith, Sr., Respondent (Defendant below) committed an act of fraud in obtaining credit in the nature of an insurance contract from it insuring a loan of \$931,000 secured by a trust upon the physical structure of the property owned by Auburn Gardens, Inc., Respondent by means of a false and fraudulent act and statement inducing the said government agent to issue its insurance contract to the lending company, to wit, the New York Life Insurance Company.

The jurisdiction of this Court is invoked under Section 237 (B) of the Judicial Code, as amended (28 U. S. C. Section 344(b)).

The decision of the Supreme Court of Appeals of Virginia was rendered on the 6th day of March, 1946.

Federal Questions Involved

(1) Did the Supreme Court of Appeals of Virginia in refusing an appeal from the decree of the Circuit Court of the City of Alexandria, Virginia which had sustained demurrers filed by the several Respondents (Defendants below) to Petitioner's Bill in Equity as amended violate the Constitutional rights of your Petitioner as guaranteed by the 14th Amendment of the Constitution of the United States in that the Petitioner was deprived of a hearing on her bill, was deprived of a jury trial on any disputed question and facts that might have arisen?

(2) Did the Supreme Court of Appeals of Virginia in refusing an appeal from the decree of the Circuit Court of the City of Alexandria, Virginia which had sustained demurrers filed by the several Respondents (Defendants below) to the Petitioner's Bill of Equity as amended violate the Constitutional rights of your Petitioner as guaranteed by the 14th Amendment of the Constitution of the United States in that Petitioner was deprived of a hearing on her bill, was deprived of a jury trial on any disputed question of fact that might have arisen; more particularly the question as to the fraud perpetrated by the Respondent, Charles Henry Smith, Sr., upon the Federal Housing Administration through his fraudulent and false statement to the Corporation Commission of the State of Virginia and his violation of the charter provisions of the corporate charter in the execution of a \$45,000 judgment note of the Auburn Gardens, Inc., which was \$40,000. in excess of the borrow-

ing capacity of the said corporation and which ultravires act induced the lending of \$931,000. by the New York Life Insurance Company to the said Corporation for the purpose of construction of a multiple dwelling upon the ground of the Petitioner which loan had been guaranteed by the Federal Housing Administration.

Opinions

The Circuit Court of the City of Alexandria in sustaining the demurrers filed against the original Bill in Equity of the Petitioner filed no opinion giving reasons for its actions in dismissing the Petitioner's Bills. The Supreme Court of Appeals in filing its decree sustaining the action of the Circuit Court of Alexandria likewise filed no opinion giving any reason for its action.

Reasons Relied On for Allowance of the Writ

The Petitioner herein states that she has been actually deprived of her "day in Court". She has filed an amended Bill in Equity in the State Court of Virginia which for clarity, direct allegations, factual replete ness, required an answer by the Respondents (Defendants below). The bill was filed within the five-year period of the statute of limitations and therefore procedural questions are not involved. Speaking demurrers were filed to the original bill and to the amended bill by Charles Henry Smith, Sr., Respondent (Defendant below). All other Respondents (Defendants below), filed formal demurrers. The points raised by the several demurrers filed by Charles Henry Smith, Sr., in reality should have been incorporated in an answer and amounted to nothing more than a delaying effort to prevent the Defendants in having to answer the Petitioner's bill.

The Bill itself alleged that Smith, Sr., was retained by the Petitioner to represent her and any Corporation to be

formed for the purpose of securing a commitment from the Federal Housing Administration to guarantee a loan of sufficient size to construct an apartment house on ground then owned by your Petitioner. For his faithful and complete services the said Smith, Sr., was to receive one-third of the stock which was to be issued to the Petitioner for her ground, zoning privileges and Federal FHA Commitment. The Respondent, Smith, Sr., paid nothing of value other than his promise to perform his services faithfully for his said stock. In the course of arranging the extra financing necessary for the treasury of the corporation, it became necessary to raise \$44,100. for the said corporation. The arrangement between the said Respondent, Smith, and your Petitioner was that a joint note be executed for the sum of \$50,000. also to be signed by one Malcolm Kilduff, the architect and engineer on the project, who by some fictitious arrangement with the said Smith also got a third of the said stock above recited. The certificates of stock standing in the name of your Petitioner, Smith, Sr., Respondent and Kilduff were endorsed in blank by all the parties and delivered in their presence to the Citizens National Bank of Virginia where application had been made for the said loan. Smith, Sr., Respondent, had also agreed with your Petitioner that a \$50,000. trust would be executed by himself and his wife on their home and be placed with the aforesaid bank for further security of the said loan. This trust was actually executed but the said Smith unbeknown to your said Petitioner never turned the same over to the trust company. Smith, Sr., Respondent, also unbeknown to your Petitioner, induced the bank to lend the Corporation and not the individuals the said \$50,000. To do this, he, as secretary and treasurer of the corporation, and Kilduff as President, executed and signed such a note under the seal of the Corporation and the three parties endorsed the said note which was renewed for two successive 90-day

periods and renewed again on the 23rd day of April, 1940. The note having this time been reduced to \$45,000. The Petitioner being entirely in the hands of her counsel the Respondent, Smith, Sr., did exactly as he directed to do in the endorsing of this note and its renewal note and became liable for this sum of money in the event of default and since Smith had not given his trust collateral to the bank as above recited and Kilduff was in an impecunious state, she stood to lose all of her assets, which the Respondent, Smith, was well aware of, since he had prepared her answers to questionnaires submitted to her by the New York Life Insurance Company who eventually did advance \$931,000. for construction of the project, to the Federal Housing Administration guarantor of the lending agencies money and the bonding company who filed the completion bond with the Federal Agency and the Lending Agency. The Petitioner was not aware nor was she informed by her counsel aforementioned that this note was a direct violation of the Charter provisions of the Corporation which restricted the said corporation from borrowing any sum of money in excess of \$5,000. By means of this change in financial strategy by the said Smith, all the stock deposited by your Petitioner, Smith, Respondent and Kilduff, was returned to said Smith by the said Citizens National Bank of Alexandria and held by Smith unbeknown to your Petitioner until the 19th day of July, 1940, when your Petitioner upon inquiry at the bank as to the collateral deposited for the said \$45,000. note as reduced and which was due on the 23rd day of July, 1940, was informed that her stock had been returned to her lawyer Smith, the Respondent, many months before.

Upon her demand for the return of her stock from the said Smith, Sr., Respondent, who refused the same and until this day she has never seen it. The constructual loan made by the New York Life Insurance Company

and guaranteed by the Federal Housing Adminsitration was divided into two sections, \$553,000. being the first section which section was fully completed and fully rendered on the first day of June, 1940 earning an annual revenue of \$108,000. for the corporation. It was immediately prior by several days to the completion of this section that Smith, Sr., Respondent, decided that he wanted to get rid of your Petitioner as a stockholder so that he could get the entire benefit of the corporation's earnings. To do this, he created an atmosphere of depreciation of the project, refused to give an accounting of any moneys passing through the hands of the corporation, and refused to have the Board of Directors of the corporation which was under his control through the connivance of himself with Kilduff renew the \$45,000. note and refused to make arrangements for the erection of the second section of the project costing \$388,000. and stated that the whole project "would blow up". He states that outside interests would pay \$20,000. for the proposition which would be divided one-third to the Petitioner and one-third to Kilduff and one-third to himself. Also stating that he would continue in the corporation in an advisory capacity. The Petitioner was offered to buy out Kilduff and Smith, Sr., on the same basis. Smith then to outweigh the Petitioner's ability to purchase the project without him made up a set of figures which compelled the Petitioner to raise \$109,000. before he would relinquish his stock in it. It was at this time and within three days of the due date of the \$45,000. note at the Citizens National Bank of Alexandria that your Petitioner seeing financial doom for herself if the said note fell due endeavored to raise the \$109,000. and it was then that she discovered that her stock was no longer at the lending bank. Securing the services at the direction of the said Smith Respondent, of another attorney who after conference with Smith being unable to get petitioner's stock to permit her to carry on

and being unable to protect her from the consequences of the default on the said note, advised her to accept from the said Smith the sum of \$13,350. This sum of money was paid to her over a period of four months by the said Respondent, Smith, who merely used the allotments made from the Federal Housing Administration then coming due to pay this consideration. Her 500 shares of stock at that time had a value of at least \$150,000. and if the title to Kilduff's and Smith, Sr., Respondent's stock was defective the value of your Petitioner's stock was worth at least \$450,000.

On the same day that Smith, Respondent, forced the involuntary resignation of the Petitioner from her position as Vice-President and Director of the Corporation and secured an ostensible title to her stock which he had unlawfully possessed himself of many months before, unbeknown to your Petitioner, he had the Citizens National Bank of Alexandria accept another ultravires note of the Corporation in the sum of \$79,000. and from its proceeds paid off the \$45,000. note endorsed jointly by the Petitioner, himself and Kilduff and returned the note to her. The balance of this loan, to wit, \$34,000. was deposited in the treasury of the Corporation as the "Equity Money" required under the rules and contract with the Federal Housing Administration to support the commitment of \$388,000. necessary to construct the second part of the project. This section was completed by June 1st, 1941, fully rented and now the entire project is in secure financial condition; the note for \$79,000. has been fully paid off and the \$931,000. construction mortgage reduced by amortization with payments to \$700,000. or less.

Smith, Sr., Respondent, in keeping with his usual tactics after he had deprived your Petitioner of her rights and during the construction of the second section of the project, by force and intimidation forced Kilduff out of his position

as President and Director of the Corporation and engineer of the project by paying him \$8,000 from the rents of the buildings and transferred his stock, which he had likewise gotten possession of as he had that of Petitioner, to his wife or son, Fanny J. Smith and/or Charles Henry Smith, Jr., Respondents (Defendants below).

By its action, the Supreme Court of Appeals of Virginia has decided substantive rights of the Petitioner without benefit of a trial in violation of the 14th Amendment of the Constitution. The Bill of Complaint set forth a plain cause of action, and to have dismissed it on demurrer constituted plain error.

In addition, the Bill set forth the perpetration of a fraud on the Federal Housing Agency by the defendants below in making false and fraudulent statements in seeking to secure extension of credit from a federal lending agency.

The allegations of the Bill and Amended Bill required an answer and trial if denied. Having sustained a demurrer which admitted the charge, the dismissal of the complaint constituted plain error.

Wherefore, your petitioner respectfully prays that a writ of certiorari may be sued out of and under the seal of this Honorable Court, directed to the Supreme Court of Appeals of Virginia, commanding that Court to certify and to send to this Court, for its review and determination, on a day certain to be therein named, a full and complete transcript of the record, and of the proceedings in said case of *Helen Calvert v. Charles Henry Smith, Sr., et al.*; and that the said decree of the Supreme Court of Appeals of Virginia may be reviewed by this Honorable Court; that such further proceedings may be had as may be necessary to afford your petitioner complete relief; and that such other and further relief in the premises may be had as to this Honorable Court may seem right and just, and your Petitioner will ever pray.

SAMUEL B. BROWN,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 144

HELEN C. CALVERT,

Petitioner,

vs.

CHARLES HENRY SMITH, CHARLES HENRY SMITH, JR., FANNY J. SMITH, AUBURN GARDENS, INC., A CORPORATION; AUBURN BUILDERS, INC., A CORPORATION; FEDERAL HOUSING AUTHORITY, A CORPORATION,

Respondent

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion of Court Below

There were no opinions filed by the Circuit Court of City of Alexandria, Virginia or the Supreme Court of Appeals of Virginia which affirmed by decree only the action of the court below.

II

Jurisdiction

1. The date of the decree of the Supreme Court of Appeals of Virginia sustaining the decree of the Circuit Court of Alexandria, was March 6, 1946 (R. 85). The decree of the Supreme Court of Appeals of Virginia sustained the decree of the Circuit Court of the City of Alexandria, Virginia, and refused the Petitioner an appeal which is a final judgment on the merits of Petitioner's claim and leaves Petitioner no further redress except by way of certiorari issuing out of this Honorable Court.

2. This suit was predicated upon the principles of Equity. The bill filed contained seventy-seven paragraphs, established a clean-cut charge of fraud against the Chief Respondent, Charles Henry Smith, Sr., and embraced all other defendants. It established among other allegations a distinct fraud against the Federal Housing Authority in violation of Acts of Congress:

June 27/1934 C 847:512—48 Stat. 1865

Feb. 3/1938 C 13:39-10-52 Stat. 24-25

June 28/1941 C 261:10—55 Stat. 365

and the decree of the lower and appellate courts of the State of Virginia was a distinct violation of the Fourteenth Amendment of the Constitution of the United States in that the Petitioner was deprived of her property without due process of law, her day in Court and was deprived of a Jury Trial.

Statement of Case

1. A Bill in Equity which is filed in a State Court within the five year period of Limitations, charging a Respondent

with clear acts of fraud, undue influence, breach of Trust as an attorney to his client, duress of her property, breach of Trust as a financial officer of a corporation to this stock-holders and board of directors unjust enrichment to the extent of \$1,000,000 or more by means of his fraud, etc., fraud on a Federal agency in obtaining credit on a fictitious and false statement and by means of which ultimately deprived his client of her stock or property is not demurable and must be answered. The sustaining of a demurrer or demurrers on any ten vague and uncertain grounds (R. 76) is a deprivation of her property in violation of her constitutional rights and amounted to *no court* hearing or due process of law.

II. Where within the statutory period a bill is filed charging clearly the fraudulent acts of the Respondent, the due process clause of the Fourteenth Amendment requires that the Plaintiff have her day in Court.

A. Due notice of proceedings.

B. A reasonable opportunity to appear and defend (or litigate her rights) including the right to testify, to produce witness, to introduce relevant documents and other evidence.

C. That the Court is of competent jurisdiction.

III. The defense of laches as set up in the demurrers is a palpable and plain subterfuge, and claims a delay of four and one half years should bar a substantial and just claim and is a clear violation of the Petitioner's right to have an answer or answers filed to her allegation, to have a hearing thereon, and a finding of facts by a chancellor or a jury.

IV

Specification of Error

The action of the Supreme Court of Appeals of Virginia in decreeing that Petitioner be not allowed an appeal from the decree of the Circuit Court of Alexandria, Virginia, dismissing the Petitioner's Amended Bill in Equity and sustaining the demurrers of the Respondent (Defendants below) filed thereto (R. 85 (R. 76).

V

Argument

The Decree of the Supreme Court of Appeals of Virginia affirming the Decree of the Circuit Court involves an important question of constitutional law and is in conflict with the decisions of this court.

The Petitioner was entitled to have an answer filed to her Bill of Complaint. This would have made an issue either for the sitting chancellor or the jury as the case would warrant.

The right of the Petitioner under the Fourteenth Amendment of the Constitution of the United States has been violated.

All the demurrers of the respondents were statutory or general demurrers and a motion to strike (Rec. 40, 76) but fortunately for the sake of clarity and in support of the Petitioner's contentions, the Respondent, Charles Henry Smith, Sr., filed a speaking demurrer raising 10 points, all of which raised questions of fact and in support of which there is no evidence or testimony: therefore it was a subterfuge (R. 76).

Had the Court dismissed the Bill on a naked motion of the respondents, that would have certainly been a violation

of her plain right to a day in court so, therefore, this court should in justice look at the pleadings to see whether a citizen of any state is having a true hearing on her cause.

This bill sets forth not only a breach of contracts between the plaintiff and this defendant but a duress of her property, an intimidation of her mind, a violation of the relationship which had never been terminated because of defendants' failure to account to the plaintiff for her property or money but a natural misrepresentation of the material facts which left the plaintiff facing financial doom at the time that this defendant forced upon her this involuntary parting with her stock interest in the said corporation.

For the purpose of brevity in this brief, without losing the full import or value of the extensive allegations in the bill, a summary is here set forth of the amended bill. Reference is given to the paragraphs in the bill and the pages of the record to facilitate the Court's action in reviewing the same.

The Bill in Equity as amended clearly sets forth the position of the plaintiff as an owner of a twelve (12) acre piece of ground and her financial position. Paragraph 2-3 (Record page 49).

Her endeavor to erect an apartment house thereon. Paragraphs 4-5 (Record pages 49-50).

Her hiring of architect to draw plans and prepare finances. Paragraph 5 (Record page 50).

Her forming of a corporation. #1, Paragraph 8 (Record page 50).

Her appearance before the zoning board to have the zoning of her property changed to meet the zoning requirement for the erection of such a structure. Paragraph 9 (Record pages 50-51).

Her retention of the defendant, Charles Henry Smith, to appear on her behalf and her foster brother and the

corporation #1 at the subsequent meeting of the zoning board, and the contract changing the zone. Paragraph 10 (Record page 51).

The request of the defendant Smith, Sr., to represent her and the corporation and her foster brother in the proposed project. The terms of his employment. Paragraphs 11 and 12 (Record pages 51-52).

The transfer of the defendant's plot of ground to the corporation #1 for consideration nominal. Paragraph 13 (Record page 52).

The formation of the new corporation. Paragraph 16 (Record page 53).

The amending of title of corporation #1 to Auburn Builders. Paragraph 16 (Record page 53).

The granting of charter to new corporation #2. Paragraph 17 (Record pages 53-54).

The issuance of the stock and stock statement to corporation commission over the signature of defendant Smith, Sr., and Kilduff and its falsity. Paragraphs 18, 19 and 21 (Record pages 54-55).

The granting of the first section of the trust loan on the property in the sum of Five Hundred Fifty Three Thousand Dollars (\$553,000.00) guaranteed by the F. H. A. Paragraph 24 (Record page 56).

The raising of the "Equity Fund" as required under the guarantee arrangement with the F. H. A. Paragraphs 25, 26 and 27 (Record page 56).

The execution of the corporate note and endorsement by Smith Sr. and the plaintiff and the various renewals thereof. Paragraphs 28, 29 and 32 (Record pages 56-57).

The endorsement of the plaintiff stock in blank and delivery of same to lending bank, and actual execution of trust by Smith, Sr., and wife on their home and apparent delivery to the bank. Paragraphs 30 and 31 (Record pages 56-57).

The start of construction and completion thereof on June 1st, 1940 as to the first section one (1) and its rentals etc. Paragraph 33 (Record page 57).

The oppressive and fraudulent acts of Smtih, Sr., during all this period in his failure to render accounts of corporate funds, call directors' meetings, etc. Paragraphs 35-36 (Record page 58).

The value of the plaintiff holdings. The falsification by the defendant Smith, Sr. of the debts of the corporation. Paragraph 40 (Record page 59).

The refusal of the defendant Smith, Sr., to further endorse the Forty Five Thousand Dollar (\$45,000.00) corporate note endorsed by the plaintiff in break of his contract with her, or to permit the corporation to renew same. Paragraphs 42, 43, 44 (Record pages 59-60).

The action of Smith, Sr. in forcing Kilduff to call a special meeting to intimidate the plaintiff to part with her stock holding. Paragraph 46 (Record pages 60-61).

The action of Smith, Sr. in terminating the relationship with the plaintiff and as yet not giving her an accounting of his handling of the corporate funds. Paragraph 47 (Record pages 61-62).

The continual harassment of the plaintiff by Smith, Sr. and Kilduff. Paragraph 48 (Record pages 60-61).

The various false and inequitable efforts of Smith to force the plaintiff to bring in new parties and sell out the plaintiffs' stock for Six Thousand Six Hundred Dollars (\$6,600.00). Paragraph 50 (R. 62).

The offer of the plaintiff to purchase the stock interest of the defendant Smith, Sr. and his effort to force her to raise \$109,000.00 by false figures and false statements. Paragraphs 51 and 52 (R. 63-64).

The discovery of the return of her stock to Smith, Sr.'s possession from the lending bank, the concealment of this

from the plaintiff and demand for their return. Paragraphs 52, 53 and 54 (R. 63-64).

The failure of Smith to place a trust on his home as agreed to with plaintiff. Paragraph 54 (R. 64).

The forcing of the plaintiff to resign her position in the corporations and the involuntary act on her part in accepting \$13,750.00 to let Smith retain her stockholdings. Paragraph 58 (R. 80-81).

The further construction of the second (2nd) section creating by July 1st, 1941 a property entirely controlled by Smith, Sr. who had by this time secured the entire stock issued and had enriched himself and his family by at least One Million Dollars (\$1,000,000.00) causes one to wonder what could have motivated the court in its action in dismissing such a flagrant case of breach of duty, unjust enrichment, duress and undue influence by an attorney to his client, by an officer of a corporation to its stockholder, by a Treasurer to his board of directors. Paragraph 61 to end (Record 66-75, inclusive).

"No judgment is just if not obtained by due process of law; otherwise courts could enter judgment without trial" (*Inland Steel Company v. N. L. R. B.*, 109 F. 2d 9.)

Herein are the allegations set forth *ad extenso* in the bill. Laches seems to be the main theme in the speaking demurrer.

It is important here to state that this court has set its own standard as to this question.

Holmesberg v. Armbrecht.

Supreme Court of United States, Law Edition Advance Opinions 1945-46, Vol. 90—No. 9, Pages 469 to 608 as set forth in headnote No. 3, page 593:

"Equity eschews mechanical rules; it depends on flexibility. Equity has acted on the principle that 'laches is not like limitation, a mere matter of time;

but principally a question of the inequity of permitting the claim to be enforced—an inequity founded upon some change in the condition or relations of the property or the parties".

This is a crystalization of what has always been the real equitable theory of laches. The respondent, Charles Henry Smith, claimed the benefit of this very theory in a demurrer which without any evidence or explanations how there was any change in his position or the property involved secured a final judgment against this Petitioner.

This ruling by the Circuit Court of Alexandria was contrary to the decision of the State of Virginia.

Creslip v. Suter, 43 W. Va. 356, 27 S. E. 288;
Wilkinson v. Witherson, 151 Va. 119, 144 S. E. 497.

The allegations in the demurrer raised distinct questions of fact and really amounted to an answer and the court of original jurisdiction has without legislative sanction or constitutional power changed the long-established and recognized method of trial to a streamlined, spectacular and strange clairvoyance which is entirely new and startling to any student of the law. This procedure is so palpably inadequate to the demands of simple justice that to find a case on the point in reports of this honorable Court is well-nigh impossible.

This was not a question of discretion or even error in the interpretation of its own decisions on law but must be classified as a complete failure of judicial procedure.

Had any violation of the state Statute of Limitation been involved and so appeared as the face of the will a demurrer would be proper unless mitigating circumstances appeared in the bill.

The violation of the Penal Section of the Federal Housing Act is a weighty and important Federal question.

Conclusion

The Supreme Court of Appeals of the State of Virginia has by its decree sustaining the demurrer filed by the respondents in the rights of the Petitioner to be violated. In addition it failed to decide a weighty and important Federal question presented to it in the pleading of the Petitioner who was the complainant therein.

It is respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, and therefore the writ of certiorari as prayed for should be granted, to the end that the judgment below may be ultimately reversed and that the Petitioner be granted a full hearing on the facts and merits of her case.

Respectfully submitted,

SAMUEL B. BROWN,
Counsel for Petitioner.

(5156)

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 144.

HELEN C. CALVERT, *Petitioner*,

v.

CHARLES HENRY SMITH, CHARLES HENRY SMITH, JR., FANNY
J. SMITH, ET AL., *Respondents*.

**APPLICATION FOR RECONSIDERATION OF PETI-
TION FOR WRIT OF CERTIORARI.**

SAMUEL B. BROWN,

FRANCIS J. WALSH,

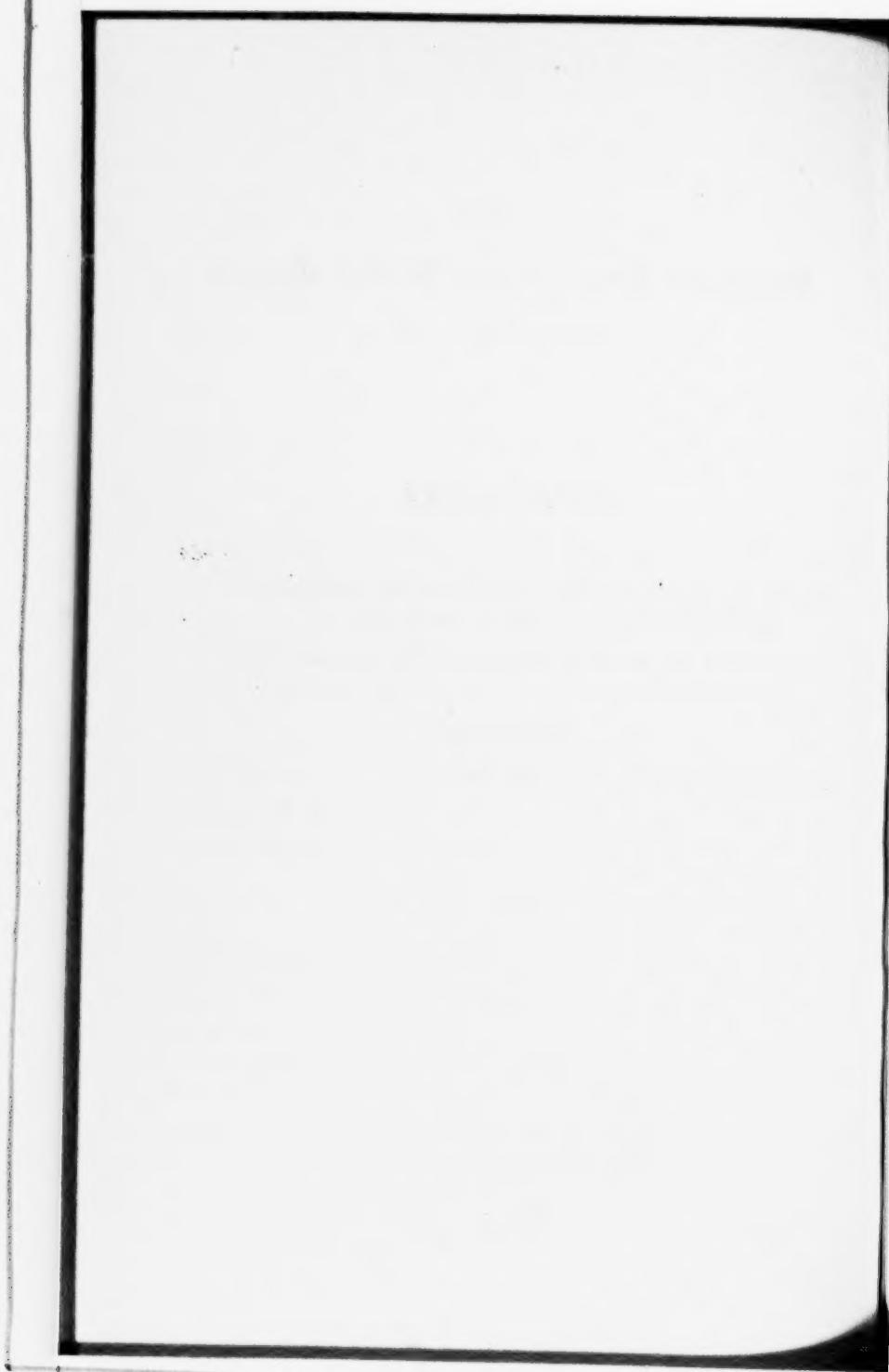
Counsel for Petitioner.

514 Colorado Building,
Washington 5, D. C.



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IN THE
Supreme Court of the United States

OCTOBER TERM, 1946.

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CHARLES HENRY SMITH, CHARLES HENRY SMITH, JR., FANNY J. SMITH, AUBURN GARDENS, INC., a Corp.; AUBURN BUILDERS, INC., a Corp.; FEDERAL HOUSING AUTHORITY, a Corp., *Respondents*.

—
MOTION FOR LEAVE TO FILE APPLICATION FOR RECONSIDERATION OF PETITION FOR WRIT OF CERTIORARI.
—

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now the Petitioner, by her counsel, and moves this Honorable Court for leave to file her application for reconsideration of Petition for Writ of Certiorari out of time for the following reasons:

That the Petition filed heretofore in this Court for Writ of Certiorari was denied by this Honorable Court on the 14th day of October, 1946, and that an application for re-

consideration, in accordance with the Rules of this Court, should have been filed within twenty-five (25) days thereafter. That Francis J. Walsh one of counsel for the Petitioner who had prepared the Petition and Brief, was taken ill during the October term of this Court and was unable to file the application for reconsideration within the time permitted by the Rules of this Court.

In addition thereto, your Petitioner represents that she was under the belief that she was entitled to file a petition for reconsideration within six (6) months or during the present term of Court.

That your Petitioner further believes that she should be permitted to file her Petition for Reconsideration out of time for the reason that her counsel was unable to comply with the Rules of this Court due to a physical disability, for four (4) months subsequent to the denial of her Petition.

WHEREFORE, your Petitioner respectfully requests that the Court permit her to file her Application for Reconsideration of the Petition for Writ of Certiorari at this time.

Respectfully submitted,

SAMUEL B. BROWN,
FRANCIS J. WALSH,
Counsel for Petitioner.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1946.

—
No. 144.
—

HELEN C. CALVERT, *Petitioner*,

v.

CHARLES HENRY SMITH, CHARLES HENRY SMITH, JR., FANNY J. SMITH, AUBURN GARDENS, INC., a Corp.; AUBURN BUILDERS, INC., a Corp.; FEDERAL HOUSING AUTHORITY, a Corp., *Respondents*.

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APPLICATION FOR RECONSIDERATION OF PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Petition of Helen C. Calvert respectfully shows to this Honorable Court as follows:

That on the 5th day of June, 1946, your Petitioner filed in this Court a Petition for Writ of Certiorari to the Supreme Court of Appeals of Virginia, to review a decision of that Court (R. 111) which rejected the Petition of Helen C. Calvert for an appeal from a decree entered by the Circuit Court of the City of Alexandria, Virginia, on the 17th day of July, 1945, thereby refusing an appeal, the effect of which was to affirm the decree of the aforesaid Circuit Court, which Court had by decree on the aforesaid date sustained several demurrers filed by these Respondents to the Bill of Complaint of your Petitioner, as amended, and dismissed the same in the cause of your Petitioner (R. 111), and this decree was final.

This Honorable Court did, on the 14th day of October, 1946, deny the Petition for Writ of Certiorari.

That your Petitioner believes that she has alleged in her Bill of Complaint sufficient allegations to entitle her to a trial of this cause on its merits and that said suit was brought by your Petitioner in equity for the return to her of five hundred (500) shares of common stock of Auburn Builders, Inc., a corporation, originally issued to your Petitioner for a valuable consideration. These shares of stock were subsequently procured from your Petitioner by Charles Henry Smith, Sr., Respondent, by fraud, breach of trust, undue influence, and breach of confidential relationship and duress of property, and transferred on the books of the said corporation to the Respondents, Charles Henry Smith, Sr., Charles Henry Smith, Jr., and Fanny J. Smith, son and wife of Charles Henry Smith, Sr., Respondents, and further to secure cancellation of the five hundred (500) shares of common stock of Auburn Builders, Inc., Respondent, then recorded in the name of Charles Henry Smith, Sr., and obtained from the Treasurer of said corporation by fraud on the said corporation and on your Petitioner, and to further secure the cancellation of the five hundred (500) shares of common stock of Auburn Builders, Inc., Respondent, now recorded in the name of Charles Henry Smith, Jr., and Fanny J. Smith, which stock was obtained by one Malcolm Kilduff from the Treasury of said corporation by fraud, in connivance with the said Charles Henry Smith, Sr., on the said corporation and your said Petitioner, and further to secure such other and further relief in the premises as the nature of the case required or to which the Court below should have seemed just and proper.

The jurisdiction of this Honorable Court is invoked under the XIV Amendment to the Constitution of the United States, commonly referred to as the "Due Process Clause" which holds that no person shall be deprived of his life, liberty, or property without due process of law. Petitioner submits that the Courts of the State of Virginia, both the Circuit Court and the Supreme Court of Appeals, denied

your Petitioner the constitutional right by rejecting her a full and complete hearing on the merits of her claim against the respondents herein, and furthermore denies her a trial by jury as guaranteed by the said Amendment (Supra).

That your Petitioner submits that the rejection of her Petition for Writ of Certiorari should be reviewed by this Honorable Court for the purpose of presenting fully and completely the basis of her contention with respect to her claim against the respondents in order to determine your Petitioner's right to a trial upon the merits in the Court below; that the dismissal of your Petitioner's Bill of Complaint and the final decree are contrary to your Petitioner's rights under the Constitution, namely, XIV Amendment, in that your Petitioner was denied the opportunity to produce witnesses in support of her claim, denied her the right to testify and to introduce relative documents and other evidence in support of the allegations made by her in her Bill of Complaint; that in addition to the foregoing, your Petitioner further desires to present to this Court the commissions of the acts of fraud on the part of the Respondents relating to the obtaining of credit in the nature of a construction loan from a Government agency, namely, Federal Housing Authority, and jurisdiction of the Court is invoked under Section 237 (B) of the Judicial Code, as amended, (28 U. S. C. Sec. 344(b)).

That your Petitioner refers this Honorable Court to the Petition for Writ of Certiorari and Brief in support thereof filed heretofore in this Court, and respectfully requests that this Honorable Court grant the application for reconsideration of the Petition for Writ of Certiorari as prayed for to the end that the judgment below may be ultimately reversed and that the Petitioner be granted full hearing on the facts and merits of her case.

Respectfully submitted,

SAMUEL B. BROWN,
FRANCIS J. WALSH,
Counsel for Petitioner.